IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : November 14, 2007

Test Case No.47/2006

B.P.Trehan ..... PETITIONER
Through: Mr.V.K.Jhanji, Sr.Advocate with Ms.Mandakini Sharma, Advocate.

Versus

$ State ..... RESPONDENT
Through: Ms.Jyoti Mendiratta, Advocate for the legal heirs.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? NO
3. Whether the judgment should be reported in the Digest? NO

ANIL KUMAR, J. (Oral)
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1. This is a petition under Section 276 of Indian Succession Act, 1925 read with Section 151 of the Code of Civil Procedure for grant of probate of Will dated 1.8.2004 executed by Late Smt. Gianwati, mother of the petitioner.

2. The petitioner averred that he is one of the son of Late Sh.Jai Gopal Trehan and Late Smt. Gianwati. Late Smt. Gianwati, mother of the petitioner expired in Delhi on 20th October, 2004 at 31/31, Old

Rajinder Nagar, New Delhi and left behind legal heirs namely Sh. R.P.Trehan (Son), Sh. B.P.Trehan (Son), Sh. C.P.Trehan (Son), Sh. A.K.Trehan (Son) and Smt. Raj Ahuja (Daughter).

3. According to the petitioner Smt. Gianwati, wife of Sh. Jai Gopal Trehan was the owner of property bearing House No.3/78, Old Rajinder Nagar, New Delhi by virtue of Conveyance Deed dated 9.12.1999 as well as agricultural land at village Bandhawari under Tehsil Sohna, District Gurgaon, Haryana which was purchased by sale deed dated 12.5.1990.

4. According to the petitioner, Smt. Gianwati during her lifetime executed a Will dated 1st August, 2004 which was attested by two witnesses Sh. V.K.Mehra and Dr. Pankaj Jain who signed the Will as attesting witnesses in presence of Late Smt. Gianwati. The Will dated 1st August, 2004 executed by Late Smt. Gianwati was also registered at the office of Sub Registrar II New Delhi having registration No.389429 in Additional Book No.III Volume No.1789 on pages 41 to 43 on 1st August, 2004. The Will was executed by Late Smt. Gianwati at her own free will and at the time of execution of the Will she was hale and hearty and the Will has been executed by her devising the property in favor of petitioner without any coercion, pressure, threat, undue influence, fraud and misrepresentation of any person and of

any kind.

5. Before the demise of Late Smt. Gianwati, mother of the petitioner, she was residing with the petitioner at house No.31/31, Old Rajinder Nagar for more than 17 years till 20th October, 2004 when she died. The petitioner is a co-executor of the Will dated 1st August, 2004. The petitioner, therefore, filed the present petition as a co-executor and a beneficiary. In the petition the details of the property of the deceased were disclosed and the petition was supported by the affidavit of the petitioner and was also verified by Dr. Pankaj Jain one of the attesting witness to the Will dated 1st August, 2004 of Late Smt. Gianwati. The other attesting witness of the Will is Mr.V.K.Mehra.

6. The notice of the petition was sent to the respondent and general citations were also published in Tribune in its Chandigarh and New Delhi edition and the notice was also issued to Chief Revenue Controlling authority for submission of valuation report in respect of estate of Smt. Gianwati.

7. Pursuant to the notice issued by the Court no objections in the shape of affidavits were filed on behalf of respondent Nos.1,3,4 & 5. Sh. R.P.Trehan filed the affidavit dated 31st October, 2006 admitting

that the Will was executed by Late Smt. Gianwati dated 1st August, 2004 and which is the last Will and testament and at the time of execution of the Will Smt. Gianwati was in sound disposing mind and it was executed by her, without any force, fraud, coercion, misrepresentation or undue influence, in favour of Sh. B.P.Trehan and Smt. Shashi Trehan. Similar affidavits were filed by Sh. C.P.Trehan, Sh. A.K.Trehan and Sh. Raj Ahuja.

8. The valuation report was also filed by the Office of Sub Divisional Magistrate (Karol Bagh) by his communication No.SDM/KB/Probate/2007/788 dated 4th July, 2007.

9. The evidence on affidavit was filed by the petitioner. The petitioner filed his evidence on affidavit dated 18th August, 2007 reiterating that Smt. Gianwati was her mother and she was the owner of the properties as detailed in the petition and she executed a legal and valid Will with sound disposing mind dated 1st August, 2004 which was signed by her and in the presence of two attesting witnesses namely Sh. V.K.Mehra and Dr. Pankaj Jain. The deponent, petitioner deposed that there is no impediment in granting probate to him in respect of the legal and valid Will dated 1st August, 2004 and that Smt. Gianwati died on 20th October, 2004. The certified copy of the death certificate of Late Smt. Gianwati was proved and exhibited

as Ex. PW 1/1 and the copy of Conveyance Deed in respect of property No.3/78, Old Rajinder Nagar was proved and exhibited as Ex.PW.1/2, the provisional sale deed in respect of the land of the deceased was also produced. The Will dated 1.8.2004 duly registered with the Sub Registrar was also proved and exhibited as Exh.PW1/4. The attesting witness of the Will of Late Smt. Gianwati, Dr. Pankaj Jain also filed his evidence on affidavit deposing inter-alia that he knew Smt. Gianwati since 1988 as she is the mother of Sh. B.P.Trehan who is his friend. He deposed that Smt. Gianwati executed a Will dated 1st August, 2004 which is signed by her in his presence and after the signatures of Smt. Gianwati the Will was signed by another attesting witness, Mr. V.K.Mehra. It was deposed that at the time of execution of the Will the testatrix was of sound disposing mind and the Will was executed by her without any force, fraud, coercion, misrepresentation and undue influence. The deposition of the attesting witness of the will has remained un-rebutted and on the basis of the evidence led by the petitioner and the attesting witness it is inevitable to infer that Will dated 1st August, 2004 executed by Late Smt. Gianwati, mother of the petitioner in his favor has been proved.

10. In R. Venkatachala Iyengar v. B.N. Thimmajamma and Others, (1959) Supp. 1 SCR 426, the Supreme Court has laid down the following propositions bearing on the nature and standard of evidence

required to prove a Will:

1. Stated generally, a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a Will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.

3. Unlike other documents, the Will speaks from the death of the testator, and therefore, the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.

4. Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. That suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at that time when the Will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the

> circumstances attendant upon the execution of the Will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.
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> 5. It is in connection with Wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasize that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is called upon to decide a solemn question and by reason of suspicious circumstances the Court has to be satisfied fully that the Will has been validly executed by the testator.
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> 6. If a caveater alleges fraud, undue influence, coercion etc. in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may raise a doubt as to whether the testator was acting of his own free Will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

11. Considering the facts and circumstances, it is apparent that the testator was of sound disposing mind at the time of execution of his last testament. There are no suspicious circumstances regarding the last testament of the deceased testator. All the yardsticks and test laid down by the Apex Court in R. Venkatachala Iyengar (supra) are fulfilled. There are no suspicious circumstances and this Court is satisfied that the will dated 1st August, 2004 is the last will of Late Smt. Gianwati.

12. Consequently the petitioner has been able to prove that the deceased late Smt. Gianwati executed her last will dated 1st August,

2004 and consequently the probate of the will of Late Smt. Gianwati her will dated 1st August, 2004 is granted to the petitioner under Section 276 read with Section 289 of the Indian Succession Act and the Probate be issued to the petitioner in respect of properties detailed in para 8 of the petition in the Form set forth in Schedule VI of the Indian Succession Act subject to petitioner furnishing of requisite Court-fees and necessary Bond with one surety. Accordingly, the petition is allowed.

13. The petitioner shall appear before the Joint Registrar for furnishing bond and surety and for paying the Court fees on 10th December, 2007 .

November, 14th, 2007 **ANIL KUMAR J.**
'k/sdp'